



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Memorial Compound Pharmacy

Respondent Name

American Zurich Insurance Company

MFDR Tracking Number

M4-17-2150-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

March 16, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The attached bill was submitted to the carrier Zurich, this bill was recommended payment. Payment was never issued. Reconsideration was sent with no success. We are now requesting Medical Fee Dispute Resolution."

Amount in Dispute: \$726.61

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: Submitted documentation does not include a position statement from the respondent. Accordingly, this decision is based on the information available at the time of review.

SUMMARY OF FINDINGS

| Dates of Service | Disputed Services | Amount In Dispute | Amount Due |
|------------------|------------------------------------|-------------------|------------|
| March 15, 2016 | Pharmacy Services – Compound Cream | \$726.61 | \$726.61 |

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
3. 28 Texas Administrative Code §133.200 sets out the insurance carrier's procedures for receipt of medical bills.
4. 28 Texas Administrative Code §133.210 sets out the procedures for medical documentation.
5. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.

6. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
7. 28 Texas Administrative Code §134.503 sets out the fee guideline for pharmacy services.
8. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
9. The submitted documentation does not include explanations of benefits presented to the requestor prior to medical fee dispute resolution.

Issues

1. Did American Zurich Insurance Company (Zurich) respond to the medical fee dispute?
2. Did Zurich take final action to pay, reduce, or deny the disputed services not later than the 45th day after receiving the medical bill?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the disputed services?

Findings

1. The Austin carrier representative for Zurich is Flahive, Ogden & Latson. Flahive, Ogden & Latson acknowledged receipt of the copy of this medical fee dispute on March 24, 2017.

28 Texas Administrative Code §133.307 states, in relevant part:

- (d) Responses. Responses to a request for MFDR shall be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.
 - (1) Timeliness. The response will be deemed timely if received by the division via mail service, personal delivery, or facsimile **within 14 calendar days after the date the respondent received the copy of the requestor's dispute** [emphasis added]. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

Review of the documentation finds that no response has been received on behalf of Zurich from Flahive, Ogden & Latson to date. The division concludes that Zurich failed to respond within the timeframe required by §133.307(d)(1). For that reason the division will base its decision on the information available.

2. Memorial contends that “this bill ... has not been paid or processed by Zurich North American Claims.”

According to Texas Labor Code Sec. 408.027(b), Zurich was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Memorial. Corresponding 28 Texas Administrative Code §133.240(a) also required Zurich to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

- (6) Final action on a medical bill—
 - (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
 - (B) denying a charge on the medical bill.

Submitted documentation supports that Zurich received a bill for the service in question on or about July 8, 2016. When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the divisions Laws and adopted administrative rules. The division finds that:

- no evidence was presented to the division to support that Zurich took final action by paying, reducing, or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that Zurich timely presented **any** defenses to Memorial on an explanation of benefits as required under 28 Texas Administrative Code §133.240 prior to the request for medical fee dispute resolution.

Absent evidence that Zurich raised any defenses that conform to the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that Zurich failed to reduce or deny the disputed services not later than the 45th day after receiving the medical bill. Therefore, the services in question will be reviewed in accordance with applicable fee guidelines.

3. 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
- (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or
 - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in question was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2). Each ingredient is listed below with its corresponding reimbursement amount as applicable.

| Ingredient | NDC & Type | Price/ Unit | Total Units | AWP Formula §134.503(c)(1) | Billed Amt §134.503 (c)(2) | Lesser of (c)(1) and (c)(2) |
|---------------------|---------------------------|-------------|-------------|--|----------------------------|-----------------------------|
| Meloxicam | 38779274601 Generic | \$194.67 | 0.18 gm | $\$194.67 \times 0.18 \times 1.25 = \43.80 | \$35.04 | \$35.04 |
| Flurbiprofen | 38779036209 Generic | \$36.58 | 5.0 gm | $\$36.58 \times 5 \times 1.25 = \228.63 | \$175.58 | \$175.58 |
| Bupivacaine HCl | 38779052405 Generic | \$45.60 | 1.2 gm | $\$45.60 \times 1.2 \times 1.25 = \68.40 | \$54.72 | \$54.72 |
| Ethoxy Diglycol | 38779190301 Generic | \$0.342 | 3.0 gm | $\$0.342 \times 3 \times 1.25 = \1.28 | \$1.02 | \$1.02 |
| Tramadol HCl | 38779237409 Generic | \$36.30 | 6.0 gm | $\$36.30 \times 6 \times 1.25 = \272.25 | \$217.80 | \$217.80 |
| Cyclobenzaprine HCl | 38779039509 Generic | \$46.332 | 2.0 gm | $\$46.332 \times 2 \times 1.25 = \115.83 | \$83.39 | \$83.39 |
| Versapro Cream Base | 38779252903 Brand Name | \$3.20 | 45.02 gm | $\$3.20 \times 45.02 \times 1.09 = \157.03 | \$144.06 | \$144.06 |

| | | | | | | |
|-----------------|----|---------|----|---------|---------|----------|
| Compounding Fee | NA | \$15.00 | NA | \$15.00 | \$15.00 | \$15.00 |
| Total | | | | | | \$726.61 |

The total allowable reimbursement for the disputed service is \$726.61. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$726.61.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$726.61, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

| | | |
|-----------|--|---------------|
| | Laurie Garnes | July 20, 2017 |
| Signature | Medical Fee Dispute Resolution Officer | Date |

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.